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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,380	11/25/2003	August Karl Meyer	038675/270589	4624
826	7590	10/13/2004	EXAMINER	
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			EDWARDS, NEWTON O	
			ART UNIT	PAPER NUMBER
			1774	

DATE MAILED: 10/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/722,380

Applicant(s)

MEYER ET AL.

Examiner

N Edwards

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ed

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-38 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-24, 29 and 30, drawn to a multicomponent, classified in class 428, subclass 370.
- II. Claims 31-34, drawn to a sheath-core fiber, classified in class 428, subclass 373.

If Group I is elected, Applicant is required under 35 U.S.C.121 to elect a select disclosed species for claims 2, 3, and 4 for the luminescent colorant, select one.

If Group I is elected, Applicant is required to select a first and second component from the species of claim 11.

If Group I is elected, Applicant is required to select a single disclosed species between claiming 13, 14, 15, 16, 17, 18, 19, and 20. Select one.

If Group I is elected, applicant's required to selected, applicant is required to elect a single disclosed species between claims 22 and 23 for phosphorescent colorant. Select one.

If Group I is elected, applicant is required to select a single disclosed species for claim 30.

- III. Claims 25, 26, 27 and 28, drawn to a bicomponent fiber, classified in class 428, subclass 374.
- IV. Claims 31-34, drawn to a sheath core fiber, classified in class 428, subclass 372+

If Group III is elected, applicant is required to elect a single disclosed species in claim 31 colorant.

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If Group III is elected, applicant is required to elect a single disclosed species in claim 34.

- V. Claims 35, 36, 37 and 38, drawn to a fabric, classified in class 442, subclass various.

The inventions are distinct, each from the other because:

Inventions Group I and Group IV are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (MPEP § 806.04(b), 3rd paragraph), and the species are patentably distinct (MPEP § 806.04(h)). In the instant case, the intermediate product is deemed to be useful as a tow or a yarn and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

The inventions of Group III is distinct from group IV and group II because Group III does not require a luminescent colorant.

The invention of Group II is distinct from Group IV because group II requires the second polymer to have at least one fluorescent or phosphorescent colorant.

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Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

A telephone call was made to Chris Humurphy on 9/21/04. On 9/30/04 Mr. Humurphy requested a written restriction requirement.

Any inquiry concerning this communication should be directed to Primary Examiner Edwards at telephone number 571-272-1521.

N. Edwards/af

October 7, 2004


N. EDWARDS
PRIMARY EXAMINER